

Assembly Bill No. 1370

CHAPTER 575

An act to amend Section 4094 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 28, 2003. Filed
with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1370, Yee. Mental health: community treatment facilities: seclusion and restraints.

Under existing law, community treatment facilities are residential facilities that are licensed by the State Department of Social Services and the State Department of Mental Health to provide residential care and mental health treatment services to children in a group setting, and that have the capacity to provide secure containment.

Existing law requires the State Department of Mental Health to adopt regulations establishing program standards for any facility licensed as a community treatment facility. These regulations are required to include standards for treatment and staffing, and for the use of psychotropic medication, discipline, and restraints.

This bill would, until January 1, 2007, prohibit the department from requiring 24-hour onsite nursing staff at community treatment facilities, but would require these facilities to retain at least one full-time, or full-time equivalent, registered nurse onsite, in specified circumstances, to maintain other nursing staff to be available on call, and to have all direct care staff trained in providing first aid and other emergency services, as specified. This bill would also authorize the department to adopt emergency regulations to implement these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 4094 of the Welfare and Institutions Code is amended to read:

4094. (a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.

(b) A certification of compliance issued by the State Department of Mental Health shall be a condition of licensure for the community

treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.

(c) The State Department of Mental Health shall adopt regulations to include, but not be limited to, the following:

(1) Procedures by which the Director of Mental Health shall certify that a facility requesting licensure as a community treatment facility pursuant to Section 1502 of the Health and Safety Code is in compliance with program standards established pursuant to this section.

(2) Procedures by which the Director of Mental Health shall deny a certification to a facility or decertify a facility that is licensed as a community treatment facility pursuant to Section 1502 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.

(4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Mental Health when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.

(5) Provisions for the State Department of Mental Health to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.

(d) The standards adopted by regulations pursuant to subdivision (a) shall include, but not be limited to, standards for treatment, staffing, and for the use of psychotropic medication, discipline, and restraints in the facilities. The standards shall also meet the requirements of Section 4094.5.

(e) (1) Until January 1, 2007, all of the following are applicable:

(A) A community treatment facility shall not be required by the State Department of Mental Health to have 24-hour onsite licensed nursing staff, but shall retain at least one full-time, or full-time equivalent, registered nurse onsite if both of the following are applicable:

(i) The facility does not use mechanical restraint.

(ii) The facility only admits children who have been assessed, at the point of admission, by a licensed primary care provider and a licensed psychiatrist, who have concluded, with respect to each child, that the



child does not require medical services that require 24-hour nursing coverage. For purposes of this section, a “primary care provider” includes a person defined in Section 14254, or a nurse practitioner who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of care, and for initiating referral for specialist care.

(B) Other medical or nursing staff shall be available on call to provide appropriate services, when necessary, within one hour.

(C) All direct care staff shall be trained in first aid and cardiopulmonary resuscitation, and in emergency intervention techniques and methods approved by the Community Care Licensing Division of the State Department of Social Services.

(2) The State Department of Mental Health may adopt emergency regulations as necessary to implement this subdivision. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be exempt from review by the Office of Administrative Law and shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

(f) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.

(g) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following conditions are met:

(1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.

(2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.

(h) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in *In re Roger S.* (1977) 19 Cal.3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including *In re Michael E.* (1975) 15 Cal.3d 183. Regulations adopted pursuant to



Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(i) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars (\$45,000) is hereby appropriated annually from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

